

REMARKS

Claims 1-20 are pending. Claims 1-20 were rejected. Applicant amends claims 1 - 3 and 10. The Disclosure was objected to. The Disclosure cross-reference information is amended.

Claims 10-20 were rejected under the judicially created doctrine of double patenting over claims 1-47 of U.S. Patent No. 6,618,993. Then Examiner asserted that the subject matter claimed in the present application is covered by the '933 patent and no apparent reason exists why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the ['993] application.

Applicant notes that apparently *only a passing reference* was made in the '993 patent to "triggering" (col. 5, line 47) the embodiments "through a PLC," (col. 5, line 51) and that the scope of pending claims 10-20, as further amended, differ sufficiently to traverse the Examiner's assertion of improperly extending the right to exclude of the '933 patent. Specifically, the '993 patent does not include:

"programmable electronic means responsive to at least one of selective gate operating parameters and selective electrical signals, provides at least one output signal in response thereto to said gate means to programmably control at least one of a first gate position motion initiation in response to a second gate position, gate position duration, a communication of diagnostic data, a communication of video data, an initiation of a failure condition, and the reception of electronic controller programming data,

which was not previously disclosed. Applicant therefore believes that the double patenting rejection of claims 10-20, as amended, is overcome.

Claims 1-6 were rejected under 35 USC 103(a) as being unpatentable over Carr in view of Bertieri et al, wherein the examiner argues that Carr discloses a crossing assembly comprising a gate means connectable to a stanchion and movable between a generally upright position to permit access therethrough, and a controller (38) for controlling the function and operation of the door. While the Examiner admits that Carr fails to disclose a programmable controller using relays and wireless links, the Examiner asserts that Bertieri discloses a controller using relays and wireless remote control links to program and operate a movable closure, and that it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the assembly of Carr with a programmable controller as taught by Bertieri.

Claim 7 was rejected further in view of Keeling et al.

Claims 8 and 9 were rejected further in view of Fox or Loban et al.

Applicant notes that in Bertieri, only the hand-held remote control 12, which issues an infrared signal to be received by a receiver 14 and then a controller 16, is programmable as to mimic codes (col 11, lines 58 - 62). The term 'control' in the remote control 12 apparently is only relevant with regard to human control of an infrared input to the apparatus of Bertieri. It is apparently the non-programmable controller 16 which controls the appliance(s), is responsive to no operating parameters and received no electrical signals from the remote control 12 .

Applicant amends claims 1 to more clearly claim the present invention, and claims 2, 3 to correspond to the amendment to claim 1. The support therefor is found at least on pages 16 - 18 of the Specification and Fig. 9.

By contrast, the apparatus of claim 1, as further amended, comprises:

"gate means connectable to a stanchion and movable between a generally upright position to permit access across the railroad crossing and a generally horizontal position for blocking access across the railroad crossing; and

programmable electronic controller responsive to at least one of selective gate operating parameters and selective electrical signals, provides at least one output signal in response thereto to said gate means to programmably control at least one of a first gate position motion initiation in response to a second gate position, gate position duration, a communication of diagnostic data, a communication of video data, an initiation of a failure condition, and the reception of electronic controller programming data,

not found in the cited art of record. The Examiner agrees that Carr does not provide the claimed programmable electronic means. Bertieri shows only a programmable hand-held remote control, well known in many arts to be wholly distinct from any control means or programmable electronic means for controlling any operation as disclosed and defined in the present application. Bertieri, does not provide the claimed programmable structure having response to selective gate operating parameters or selective electrical signals, or that which is structured to provide any of the gate position, duration, communication of diagnostic data, failure condition and/or reception of programming data control according to the claimed invention. Bertieri's 'programmable' controller 12 provides no operating parameter or electrical control signal, and

programmable control of none of these claimed inventive features. Therefore, Applicant argues that the hand-held controller 12 and its analogs provide no structure which can be combined with Carr to provide the present claimed invention.

Furthermore, the appliance controllers 16, 40 of Bertieri provide no disclosure, teaching or suggestion of controller programming thereof. Thus Applicant further argues that Bertieri is inadequate to provide the missing structure which together with Carr would provide the invention of claim 1, and that either cite does not teach, suggest or disclose any such claimed combination. The claims dependent on claim 1 provide additional inventive features which further patentably distinguish the present invention over the cited art of record. Applicant therefore believes that the rejection of claims 1-6 under 35 USC 103(a) as being unpatentable over Carr in view of Bertieri et al., and the rejection of claims 7 further in view of Keeling et al., and the rejection of claims 8 and 9 further in view of Fox or Loban et al., is without basis and should be withdrawn, or in the alternative, is overcome.

Applicant, having amended the Specification and the Claims, and having distinguished the present invention over the cited art of record, believes that the objections and rejections to the present application are overcome. Applicant respectfully requests reconsideration and allowance of the present application. The Examiner is invited to call the Applicant's undersigned attorney should he feel that such a call would further the prosecution of the present application.

Respectfully submitted,
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